



**U.S. Citizenship
and Immigration
Services**

(b)(6)

DATE: JUN 29 2015

FILE #: [REDACTED]

PETITION RECEIPT #: [REDACTED]

IN RE:

Petitioner: [REDACTED]

Beneficiary: [REDACTED]

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,


Ron Rosenberg

Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center (Director). It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be sustained, and the petition approved.

The petitioner is a dental practice. On July 11, 2014, it filed a Form I-140, Immigrant Petition for Alien Worker, seeking to permanently employ the beneficiary in the United States as dentist pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2). As required by statute, the petition was accompanied by an ETA Form 9089, Application for Permanent Employment Certification, which was filed with the U.S. Department of Labor (DOL) on November 5, 2013, and certified by the DOL (labor certification) on June 4, 2014.

On October 10, 2014 the Director denied the petition on two grounds: (1) the petitioner failed to establish that it would be the full-time employer of the beneficiary, and (2) the petitioner failed to establish its continuing ability to pay the proffered wage from the priority date of the petition (November 5, 2013) up to the present.

The petitioner filed a timely appeal. The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

Section 203(b)(2) of the Act provides for the granting of preference classification to members of the professions holding advanced degrees whose services are sought by employers in the United States. To be eligible for approval, a beneficiary must have all the education, training, and experience specified on the labor certification as of the petition's priority date. See *Matter of Wing's Tea House*, 16 I&N 158 (Act. Reg. Comm. 1977). The petitioner must also establish its continuing ability to pay the proffered wage to the beneficiary from the priority date up to the present. See 8 C.F.R. § 204.5(g)(2). The priority date of the instant petition is November 5, 2013, which is the date the underlying labor certification was accepted for processing by the DOL. See 8 C.F.R. § 204.5(d). The proffered wage is \$147,659 per year.

Upon review of the entire record, including the materials submitted by the petitioner in support of the appeal and in response to our request for additional evidence, we find that the petitioner has overcome the grounds for denial in the Director's decision. We determine that the petitioner has established that it more likely than not will be the beneficiary's full-time employer, and that it has had the continuing ability to pay the proffered wage from the priority date onward based on Form W-2 statements showing gross pay above the proffered wage in both 2013 and 2014 and additional financial documentation submitted with the initial filing and on appeal. See 8 C.F.R. § 204.5(g)(2); see also *Matter of Sonegawa*, 12 I&N Dec. 612 (Reg'l Comm'r 1967). In addition, the beneficiary meets the educational and experience requirements of the labor certification, and of section 203(b)(2) of the Act for classification as an advanced degree professional. Accordingly, the petition will be approved.

The burden of proof in these proceedings rests solely with the petitioner. See Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has met that burden.

ORDER: The appeal is sustained. The petition is approved.